

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
December 17, 2013

v

JOSHUA THOMAS REILLY,

Defendant-Appellee.

No. 312372
Ingham Circuit Court
LC No. 07-000598-FH

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

MEMORARDUM.

Plaintiff appeals by leave granted from the circuit court's resentencing of defendant under the Holmes Youthful Trainee Act (HYTA), MCL 762.11 *et seq.* We vacate the trial court's sentence and remand for the trial court to impose the original sentence given to defendant.

Whether the trial court had the authority to modify defendant's sentence is a question of law, which is reviewed de novo. *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997), lv den 459 Mich 854 (1998). In this case, the trial court, without the benefit of a full record,¹ resentenced the defendant to HYTA status. This was contrary to law. Once a defendant's sentence has been imposed, a trial court's ability to modify it is limited. MCR 6.429(A) provides that "[t]he court may correct an invalid sentence, but the court may not modify a valid sentence after it has been imposed except as provided by law."

Given the incomplete nature of the record of the original sentence, the trial court was forced to engage in speculation as to what information and/or justification(s) Judge Brown may have had or relied on in initially sentencing to defendant. It is clear, however that Judge Brown did not believe defendant a candidate for HYTA status. Consequently, on the record before us, we cannot find that the original sentence in this matter was invalid. Therefore the trial court erred when it resentenced defendant. *Harris*, 224 Mich App at 597. We therefore vacate the sentence given by Judge Aquilina in this case and remand to the trial court to reinstate the original sentence given to defendant by Judge Brown.

¹ The parties agree and this Court finds that the record made by Judge Brown in this matter is, at most, incomplete.

We vacate the sentence which is the subject of this appeal and remand to the trial court for the sole purpose of reinstating the original sentence given to defendant. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Stephen L. Borrello